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## DEBATE IN THE SENATE.

## PROSPECTIVE PRE-EMPTION BILL.

THURSDAY, JANUARY 28, 1841.

The Pre-emption Bill being still under consideration, and the question being on Mr. CRITTENDEN's motion to recommit the bill with instructions to engrave on it an amendment for the distribution of the proceeds of the Public Lands among the States—

Mr. CLAY, of Kentucky, rose and addressed the Senate substantially as follows:

With the measure of the distribution of the proceeds of the sales of the public lands among the States of the Union, I have been so associated for the last eight or ten years, that, although it had not been my original purpose to say one word in respect to that measure at the present session of Congress, the debate on my colleague's motion has taken such a wide range that my silence might be construed into indifference or an abandonment, on my part, of what I conscientiously believe to be one of the most important and beneficial measures ever submitted to the consideration of an American Congress. I did not intend to move in the matter at this session, because of the extraordinary state of parties and of public affairs. The party against which the people of the United States had recently pronounced decisive judgment was still in power, and had majorities in both Houses in Congress. It had been always opposed to the distribution bill. The new Administration, to which a majority of the People of the United States had given its confidence, had not yet the possession of power, and, prior to the 4th of March next, can do nothing to fulfil the just expectations of the country. The Treasury is exhausted and in a wretched condition. I was aware that its state would be urged as a plausible plea against present distribution—urged even by a party prominent members of which had heretofore protested against any reliance whatever on the public lands as a source of revenue. Now, although I do not admit the right of Congress to apply the proceeds of all the public lands, consistently with the terms of the deeds of cession from Virginia and the other ceding States, to the purposes of ordinary revenue of Government, yet Congress being in the habit of making such an application, I was willing to acquiesce in the continuation of the habit until, I hope at some early day, a suitable provision can be made for the exchequer out of some more appropriate and legitimate source than the public lands.

The distribution proposed by my colleague can be made, and, if no other Senator does, I will propose to make it, to commence on the 1st day of January next, leaving the proceeds of the lands of the current year applicable to the uses of the Treasury. This will avoid the financial objection, as I hope, prior to that day, that some permanent and adequate provision will be made to supply Government with the necessary revenue. I shall, therefore, vote for the proposition with that qualification since it has been introduced, although I had not intended to move it myself at this session.

I came to the present session of Congress under the hope that it would dedicate itself earnestly to the urgent and necessary work of such a repair of the shattered vessel of State as would put it in a condition to perform the glorious voyage which it will begin on the 4th of March next. I supposed indeed, that all new and doubtful measures of policy would be avoided; but, persuaded myself that a spirit of manliness, of honor, and of patriotism would prompt those who yet linger in power and authority at least to provide the necessary ways and means to defray the expenses of Government, in the hands of their successors, during the present year, if not permanently. But I confess with pain that my worst fears are about to be realized. The Administration not only perseveres in the errors which have lost it the public confidence, but refuses to allow its opponents to minister, in any way, to the sufferings of the community or the necessities of the Government. Our Constitution is defective, in allowing those to remain in authority three or four months after the People have pronounced judgment against them; or rather the Convention did not foresee the

## BOON'S LICK TIMES.

"ERROR CEASES TO BE DANGEROUS, WHEN REASON IS LEFT FREE TO COMBAT IT."—JERFISON.

Vol. 2.

FAYETTE, MISSOURI, SATURDAY, JUNE 26, 1841.

No. 15.

possibility of the existence of an Administration which would deliberately treat with neglect and contempt the manifest sentiments of their constituents. It did not imagine that an Administration could be so formed as that, although smarting under a terrible but merited defeat, it would, in the spirit of the ancient fable, doggedly hold on to power, refusing to use it, or to permit others to use it, for the benefit of the People.

We have just had read to us a lecture from the honorable and highly respectable Senator from New Hampshire, (Mr. PIERCE,) which ought to have been exclusively addressed to his own friends. He tells us that we are wasting our time in party debate, and that a measure is always got up at the commencement of every session on which a general political battle is fought, to the exclusion of all important public business. There is some truth in the charge; and, if it be wrong, who ought to be held responsible for it? Clearly those to whom the administration of the Government has been entrusted, and who have majorities in both Houses of Congress. What has been the engrossing subject at this session? The permanent pre-emption bill. Who introduced it, and why was it introduced? Not my friends, but the Senators. And it has been brought up when there is an operating pre-emption law in existence, which has a long time to run. After the debate had been greatly protracted, and after one Administration Senator had notified the officers of the Chamber that they might get their lamps in order, and another had declared that they were ready to encamp on the ground until the bill was passed, why has the debate been permitted to continue weeks longer, without explanation, and to the surprise of every one on this side of the Senate? Why has more than half the session been consumed with this single and unnecessary subject? I would ask the Senator, who assumes the right to lecture us all, why he concurred in pressing on the Senate this uncalculated measure? Yes, sir, my worst fears are about to be realized. Nothing will be done for the country during this session. I did hope that, if the party in power would not, in some degree, atone for past misdeeds during the remnant of their power, they would at least give the new Administration a fair trial, and forbear all denunciation or condemnation of it in advance. But has this been their equitable course? Before the new President had entered upon the duties of his office, gentlemen who have themselves contributed to bring the country to the brink of ruin, (they will pardon me for saying it, but the truth must be spoken,) these very gentlemen are decrying beforehand those measures of the coming Administration which are indispensable, and which they must know to be indispensable, to restore the public happiness and prosperity! The honorable Senator in my eye (Mr. WRIGHT) said, in so many words, that he meant to condemn this measure of distribution in advance.

[Mr. WRIGHT shook his head.] I have taken down the Senator's words, and have them here on my notes.

[Mr. WRIGHT. If the honorable Senator will permit me, I will tell him what I said. I said that the course of his friends had forced the consideration of this measure on us in advance.]

Forced it on them in advance! How? Projects to squander the public domain are brought forward by friends of the Administration, in the forms of a granulation bill, by which fifty millions in value of a portion of it would have been suddenly annihilated; pre-emption bills, cessions to a few of the States of the whole within their limits. Under these circumstances, my colleague presents a conservative measure, and proposes, in lieu of one of these wasteful projects, by way of amendment, an equitable distribution among all the States of the avails of the public lands. With what propriety then can it be said that we, who are acting solely on the defensive, have forced the measure upon our opponents? Let them withdraw their bill, and I will answer for it that my colleague will withdraw his amendment, and will not, at this session, press any measure of distribution. No, sir, no. The policy of gentlemen on the other side, the clearly defined and distinctly marked policy, is, to condemn, in advance, those measures which their own sagacity enables them to perceive that the new Administration, faithful to their own principles and to the best interests of the country, must bring forward to build up once more the public prosperity. How, otherwise, are we to account for opposition, from leading friends of the Administration, to the imposition of duties on the merest luxuries in the world? It is absolutely necessary to increase the public revenue. That is incontestable. It can only be done by the imposition of duties on the protected articles, or on the free articles, including those of luxury; for no one, I believe, in the Senate, dreams of laying a direct tax. Well, if duties were proposed on the protected articles, the proposition would instantly be denounced as reviving a high tariff. And when they are proposed on silks and wines, Senators on the other side raise their voices in opposition to duties on these articles of incontestable luxury. These, moreover, are objects of consumption chiefly by the rich, and they, of course, would pay the principal part of the duty. But the exemption of the poor from the burden does not commend the measure to the acceptance of the friends of this expiring Administration. And yet they, sometimes, assume to be guardians of the interests of

the poor. Guardians of the poor! Their friendship was demonstrated at a former session by espousing a measure which was to have the tendency of reducing wages, and now they put themselves in opposition to a tax which would benefit the poor and fall almost exclusively on the rich.

I will not detain the Senate now by dwelling on the ruinous state of the trade with France, in silks and wines especially, as it is now carried on. But I cannot forbear observing that we import from France and her dependencies thirty-three millions of dollars annually, whilst we export in return only about nineteen millions, leaving a balance against us in the whole trade, of fourteen millions of dollars; and excluding the French dependencies, the balance against us in the direct trade with France is seven million millions. Yet gentlemen say we must not touch this trade! We must not touch a trade with such a heavy and ruinous balance against us—a balance, a large part, if not the whole, of which is paid in specie. I have been informed and believe that the greater part of the gold which was obtained from France under the treaty of indemnity, and which, during General Jackson's administration, was with so much care and parade introduced into the United States, perhaps under the vain hope that it would remain here, in less than eighteen months was re-exported to France in the very boxes in which it was brought, to liquidate our commercial debt. Yet we must not supply the indispensable wants of the Treasury by taxing any of the articles of this disadvantageous commerce! And some gentlemen, assuming not merely the guardianship of the poor, but of the South also, (with about as much fidelity in the one case as in the other,) object to the imposition of duties upon these luxuries, because they might affect somewhat the trade with France in a Southern staple. But duties upon any foreign imports may affect, in some small degree, our exports. If the objection, therefore, be sustained, we must forbear to lay any impost, and rely, as some gentlemen are understood to desire, on direct taxes. But to this neither the country nor Congress will ever consent. We have hitherto resorted mainly, and I have no doubt always will resort, to our foreign imports for revenue. And can any objects be selected with more propriety than those which enter so largely into the consumption of the opulent? It is of more consequence to the community, in the consideration of duties, who consumes the articles charged with them, and consequently who pays them, than how the duties are levied, and purchased abroad. The south is the last place from which an objection should come on the score of disproportionate consumption. I venture to assert that there is more Champagne wine consumed, in the Astor house, in the city of New York, in one year, than in any State south of the Potomac. [A laugh.] Our total amount of imports last year was \$104,000,000. Deducting the free articles, the amount of goods subject to duty was probably not more than between fifty and sixty millions. Now, if we are to adhere to the compromise of the tariff, which is my wish to be able to do, but concerning which I have remarked lately a portentous silence on the part of some of its professing friends on the other side, it will be recollected that the maximum of any duty to be imposed is twenty per cent. after June, 1842. It would not be safe to assume our imports in future of articles that would remain for consumption, and not be re-exported, higher than one hundred millions, twenty per cent. on which would yield a gross revenue annually of twenty millions. But I think that we ought not to estimate our imports at more than ninety millions; for, besides other causes that must tend to diminish them, some ten or twelve millions of our exports will be applied annually to the payment of interest or principal of our State debts held abroad, and will not return in the form of imports. Twenty per cent. upon ninety millions would yield a gross revenue of eighteen millions only. Thus it is manifest that there must be additional duties. And I think it quite certain that the amount of necessary revenue cannot be raised without going up to the limit of the compromise upon all articles whatever which, by its terms, are liable to duty. And these additional duties ought to be laid now, forthwith, clearly before the close of this session. The revenue is now deficient, compelling the administration to resort to the questionable and dangerous use of Treasury notes. Of this deficient revenue there will go off five millions during the next session of Congress, according to the estimate of the Secretary of the Treasury, two and a half millions on the 31st December, 1841, and two and a half millions more on the 30th June, 1842. This reduction takes place under that provision of the compromise act by which one-half of the excess of all duties beyond twenty per cent. is repealed on the last day of this year, and the other moiety of that excess on the last day of June, 1842. Now if Congress does not provide for this great deficiency in the revenue prior to the close of the present session, how is it possible to provide for it in season at the session which begins on the first Monday in December next? No great change in the customs ought to be made without reasonable notice to the merchant, to enable him to adapt his operations to the change. How is it possible to give this notice, if nothing is done until the next regular meeting of Congress? Waving all notice to the merchant, and advertising merely to the habits of Congress, is it not manifest that no

revenue bill can be passed by the last day of December, at a session commencing on the first Monday of that month? How, then, can gentlemen who have at least the temporary possession of the Government reconcile it to duty and to patriotism to go home and leave it in this condition? I heard the Senator from Pennsylvania, (Mr. BUCHANAN,) at the last session, express himself in favor of a duty on wines and silks. Why is he now silent? Has he, too, changed his opinion?

[Mr. BUCHANAN. I have changed none of my opinions on the subject.]

I am glad, most happy, to hear it. Then the Senator ought to unite with us in the imposition of duties sufficient to produce an adequate revenue. Yet his friends denounce, in advance, the idea of imposing duties on articles of luxury! They denounce an extra session, after creating an absolute necessity for it! They denounce all measures to give us a sound currency but the Sub-Treasury, denounced by the People! They denounce the administration of President Harrison before it has commenced! Parting from the power of which the People have stripped them with regret and reluctance, and looking all around them with sullenness, they refuse to his administration that fair trial which the laws allow to every arraigned culprit. I hope that gentlemen will reconsider this course, and that, out of deference to the choice of the People, if not from feelings of justice and propriety, they will forbear to condemn before they have heard President Harrison's administration. If gentlemen are for peace, and harmony, we are prepared to meet them in a spirit of peace and harmony, to unite with them in healing the wounds and building up the prosperity of the country. But if they are for war, as it seems they are, I say, "Lay on, Macduff!"

[Sensation, and a general murmuring sound throughout the Chamber and galleries.]

One argument of the honorable Senator who has just taken his seat (Mr. WRIGHT) I wish to detach from the residue of his speech, that I may, at once, put it to sleep forever. With all his well known ability, and without meaning to be disrespectful, I may add, with all his characteristic ingenuity and subtlety, he has urged that if you distribute the proceeds of the public lands, you arrogate to yourselves the power of taxing the people to raise money for distribution among the States; that there is no difference between revenue proceeding from the public lands and revenue from the customs; and that there is nothing in the constitution which allows you to lay duties on imports for the purpose of making up a deficiency produced by distributing the proceeds of the public lands.

I deny the position, utterly deny it, and I will refute it from the express language of the Constitution. From the first, I have been of those who protested against the existence of any power in this Government to tax the People for the purpose of a subsequent distribution of the money among the States. I still protest against it. There exists no such power. We invoke the aid of no such power in maintenance of the principle of distribution, applied to the proceeds of the sales of the public domain. But if such a power clearly existed there would not be the slightest ground for the apprehension of its exercise. The imposition of taxes is always an unpleasant, sometimes a painful duty. What Government will ever voluntarily incur the odium and consent to lay taxes, and become a tax gatherer, not to have the satisfaction of expending the money itself, but to distribute it among other Governments to be expended by them? But to the Constitution. Let us see whether the taxing power and the land power are, as the argument of the Senator assumes, identical and the same. What is the language of the Constitution? "The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the States." Here is ample power to impose taxes; but the object for which the money is to be raised is specified. There is no authority whatever conveyed to raise money by taxation, for the purpose of subsequent distribution among the States, unless the phrase "general welfare" includes such a power. The doctrine, once held by a party upon whose principles the Senator and his friends now act, in relation to the Executive Department, that those phrases included a grant of power, has been long since exploded and abandoned. They are now, by common consent, understood to indicate a purpose and not to vest a power. The clause of the Constitution, fairly construed and understood, means that the taxing power is to be exerted to raise money to enable Congress to pay the debts and provide for the common defence and general welfare. And it is to provide for the general welfare, in any exigency, by a fair exercise of the powers granted in the Constitution. The Republican party of 1798, in whose school I was brought up, and to whose rules of interpreting the Constitution I have ever adhered, maintained that this was a limited Government; that it had no powers but granted powers, or powers necessary and proper to carry into effect the granted powers; and that, in any given instance of the exercise of power, it was necessary to show the specific grant of it, or that the proposed measure was necessary and proper to carry into effect a specifically granted power or powers.

There is then, I repeat, no power or au-

thority in the General Government to lay and collect taxes in order to distribute the proceeds among the States. Such a financial project, if any Administration were mad enough to adopt it, would be a flagrant usurpation. But how stands the case as to the land power? There is not in the whole Constitution a single line or word that indicates an intention that the proceeds of the public lands should come into the public Treasury to be used as a portion of the revenue of the Government. On the contrary, the unlimited grant of power to raise revenue, in all the forms of taxation, would seem to manifest that that was to be the source of supply, and not the public lands. But the grant of power to Congress over the public lands in the Constitution is ample and comprehensive. "The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States." This is a broad, unlimited, and plenary power, subject to no restriction other than a sound, practical, and statesmanlike discretion, to be exercised by Congress. It applies to all the territory and property of the United States, whether acquired by treaty with foreign Powers, or by cessions of particular States, or however obtained. It cannot be denied that the right to dispose of the territory and property of the United States includes a right to dispose of the proceeds of their territory and property, and consequently a right to distribute those proceeds among the States. If the general clause in the Constitution allows and authorizes, as I think it clearly does, distribution among the several States, I will hereafter show that the conditions on which the States ceded to the United States can only now receive their just and equitable fulfillment by distribution.

The Senator from New York argued that if the power contended for, to dispose of the territory and property of the United States, or their proceeds, existed, it would embrace the national ships, public buildings, magazines, dock-yards, and whatever else belonged to the Government. And so it would. There is not a doubt of it; but when will Congress ever perpetrate such a folly as to distribute this national property? It annually distributes arms, according to a fixed rule, among the States, with great propriety. Are they not property belonging to the United States? To whose authority is the use of them assigned? To that of the States. And we may safely conclude that when it is expedient to distribute, Congress will make distribution, and when it is best to retain any national property, under the common authority, it will remain subject to it. I challenge the Senator or any person, to show any limitation on the power of Congress to dispose of the territory or property of the United States or their proceeds, but that which may be found in the terms of the deeds of cession, or in a sound and just discretion. Come on; or who can show it? Has it not been shown that the taxing power, by a specification of the objects for which it is to be exercised, excludes all idea of raising money for the purpose of distribution? And that the land-power places distribution on a totally different footing? That no part of the proceeds of the public domain compose necessarily, or perhaps properly, a portion of the public revenue? What is the language of the Constitution? That to pay the debts, provide for the common defence and general welfare of the United States, you may take the proceeds of the public lands? No, no. It says, for these ends, in other words, for the conduct of the Government of the Union, you shall have power, unlimited as to amount and objects, to lay taxes. That is what it says; and if you go the Constitution, this is its answer. You have no right to go for power any where else.

Hereafter, I shall endeavor further to show that, by adopting the distribution principle, you do not exercise or affect the taxing power; that you are setting no dangerous precedent, as is alleged; and that you will, in fact, only pay an honest debt to the States, too long withheld from them, and of which some of them now stand in the greatest need.

In the opposition to distribution, we find associated together the friends of pre-emption, the friends of graduation, and the friends of a cession of the whole of the public lands to a few of the States. Instead of reproaching us with a want of constitutional power to make an equitable and just distribution of the proceeds of the sales of the public lands among all the States, they would do well to point to the constitutional authority or to the page in the code of justice by which their projects are to be maintained. But it is not my purpose now to dwell on these matters. My present object is with the argument of the Senator from New York and his friends, founded on financial considerations.

All at once these gentlemen seem to be deeply interested in the revenue derivable from the public lands. Listen to them now, and you would suppose that heretofore they had always been, and hereafter would continue to be, decidedly and warmly in favor of carefully husbanding the public domain and obtaining from it the greatest practicable amount of revenue, for the exclusive use of the General Government. You would imagine that none of them had ever espoused or sanctioned any scheme for squandering the public lands; that they regarded them as a sacred and inviolable fund, to be preserved for the benefit of posterity as well as this generation.

It is my intention now to unmask these gentlemen, and to show that their real system for the administration of the public

lands embraces no object of revenue, either for the General Government or the States; that their purpose is otherwise to dispose of them; that the fever for revenue is an intermittent, which appears only when a bill to distribute the proceeds equally among all the States is pending; and that as soon as that bill is got rid of, gentlemen relapse into their old projects of throwing away the public lands, and denouncing all objects of revenue from the public lands as unwise, illiberal, and unjust towards the new States. I will make all this good by the most incontrovertible testimony. I will go to the very highest authority in the dominant party during the last twelve years, and from that I will come down to the honorable Senator from New York and other members of the party. (I should not say come down; it is certainly not descending from the late President of the United States to approach the Senator from New York. If intellect is the standard by which to measure elevation, he would certainly stand far above the resident of the Hermitage.) I will show by the most authentic documents, that the opponents of distribution, upon the principle now so urgently pressed, of revenue, are no bona fide friends of revenue from the public lands. I am afraid I shall weary the Senate, but I entreat it to bear patiently with me whilst I retrace the history of this measure of distribution.

You will recollect, sir, that some nine or ten years ago the subject of the public lands, by one of the most singular associations that was ever witnessed, was referred to the Committee on Manufactures, by one of the strangest parliamentary manoeuvres that was ever practised, for no other purpose than to embarrass the individual who now has the honor to address you, and who happened at that time to be a member of that committee. It was in vain that I protested against the reference, showed the total incongruity between the manufactures of the country and the public lands, and entreated gentlemen to spare us, and to spare themselves the reproaches which such a forced and unnatural connexion would bring upon them. It was to no purpose; the subject was thrown upon the Committee on Manufactures, in other words it was thrown upon me; for it was well known that although among my colleagues of the committee there might be those who were my superiors in other respects, owing to my local position, it was supposed that I possessed a more familiar knowledge with the public lands than any of them, when, in truth, mine was not considerable. There was another more weighty motive with the majority of the Senate for devolving the business on me. The zeal, and, perhaps, too great partiality of my friends had, about that time, presented my name for a high office. And it was supposed that no measure, for permanently settling the question of the public lands, could emanate from me that would not affect injuriously my popularity either with the new or old States, or with both. I felt the embarrassment of the position in which I was placed; but I resolved not to sink under it. I pulled off my coat and went to hard work. I manufactured the measure for distributing equitably, in just proportions the proceeds of the public lands among the several States. When reported from the committee, its reception in the Senate, in Congress, and in the country was triumphant. I had every reason to be satisfied with the result of my labors, and my political opponents had abundant cause for bitter regrets at their indiscretion in wantonly throwing the subject on me. The bill passed the Senate, but was not acted upon in the House at that session. At the succeeding session it passed both Houses. In spite of all those party connexions, which are, perhaps, the strongest ties that bind the human race, Jackson men, breaking loose from party thralldom, united with anti-Jackson men, and voted the bill by overwhelming majorities in both Houses. If it had been returned by the President, it would have passed both Houses by constitutional majorities, his veto notwithstanding. But it was a measure suggested, although not voluntarily, by an individual who shared no part in the President's counsels or his affections; and although he had himself, in his annual message, recommended a similar measure, he did not hesitate to change his ground in order to thwart my views. He knew, as I have always believed and understood, that if he returned the bill, as by the constitution he was bound to do, it would become a law, by the sanction of the requisite majorities in the two Houses. He resolved, therefore, upon an arbitrary course, and to defeat by an irregular and unprecedented proceeding, what he could not prevent by reason and the legitimate action of the Constitution. He resolved not to return the bill, and did not return it to Congress, but pocketed it!

I proceed now to the documentary proof which I promised. In his annual message, December 4, 1832, President Jackson says:

"Previous to the formation of our present Constitution, it was recommended by Congress that a portion of the waste lands owned by the States should be ceded to the United States for the purpose of general harmony, and as a fund to meet the expenses of the war. The recommendation was adopted, and at different periods of time, the States of Massachusetts, New York, Virginia, North and South Carolina, and Georgia, granted their vacant soil for the uses for which they had been asked. As the lands may now be considered as relieved from this pledge, the object for which they were ceded having been accomplished, it is in the discretion of Congress to dispose of them in such way as best to conduce to the quiet, harmony, and general interest of the American People." &c. "It seems to me to be our true policy that the public lands should cease as soon as practicable to be a source of revenue." &c.

Thus in December, 1832, President Jackson was of opinion, first, that the public lands were released from the pledge of them to the expenses of the Revolutionary war. Secondly, that it was in the power of Congress to dispose of them according to its discretion, in such way as best to conduce to the quiet, harmony, and general in-